

Environmental Planning is an Operational Issue for RIMPAC '06

As I write this column for the fall issue of *Currents*, the Rim of the Pacific (RIMPAC) exercise for 2006 is winding down. This year's RIMPAC international naval exercise is the 20th in a series conducted periodically since 1971. Navies from eight nations, 35 ships, six submarines, 160 aircraft and 19,000 personnel participated. The exercise was carried out very close to plan, but as you may know, we lost three days of operations with active sonar use due to a Temporary Restraining Order (TRO) granted by a district court in the 9th Federal District (in California) in response to a suit brought by a group of non-governmental organizations. The message here is that environmental planning is an operational issue. This time, the effects from that issue bubbled up into a measurable impact on our critical training at sea. I'd like to take you through the permitting process, the litigation, the National Defense Exemption (NDE) approved by the Deputy Secretary of Defense (DEPSECDEF) under the Marine Mammal Protection Act (MMPA) and how we plan to move ahead to ensure our training exercises are compliant under the relevant statutes and ultimately protected from curtailment.

Harassment Authorization (IHA) under MMPA, and consultative biological assessment under the Endangered Species Act to the National Marine Fisheries Service (NMFS) for processing toward regulatory authorization. The simple telling in two sentences does not come close to representing the months of effort and mountains of paper involved in doing all that. Remember

as well, this was the first time the Navy had sought such authorization for one of its major fleet training exercises AND the sonar issue is very controversial. Those aspects made every step of the way very thorny for the Navy and for NMFS. All along the way, we considered it a virtual certainty that we and NMFS would be sued over this exercise and the authorization.



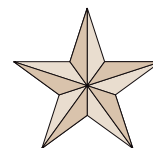
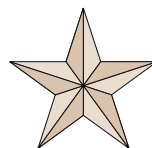
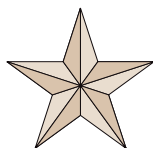
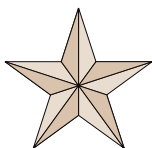
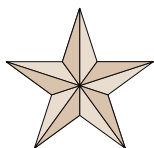
This time, the effects from the issues associated with the use of active sonar bubbled up into a measurable impact on our critical training at sea.

Authorization

The process, or processes, required to receive authorization to conduct RIMPAC '06 began in 2004. The Pacific Fleet's environmental staff developed the documentation required to show the analysis of effects of all the naval activities that would take place in the exercise. They forwarded the Environmental Assessment, the application for an Incidental

Mitigations

As a part of every environmental planning document, the action proponent, or person/agency responsible for the action, must propose measures it will take to mitigate the effects their proposed action may have on the environment. Through coordination with NMFS, we arrived at a set of mitigation measures which they considered protective



enough of the environment and we considered not too intrusive on the fidelity of our training. How we did in those endeavors is about to be analyzed in the RIMPAC after-action report.

The measures about which you may have read or heard involve things we haven't done before. One of the reasons these measures were especially stringent was the concern there could be a mortality of a whale (most likely due to stranding on a beach) that was not permitted by the IHA. The IHA we received permitted only behavioral disturbances of the marine mammals, not injuries or mortalities. That's why we operated only outside of 25 kilometers from the 200 meter depth line, except during three choke point exercises. (I'll get to those.) That was why we expanded the safety zones (where we decrease the source level or output

hours (about 8 to 12) within about 15 miles of a coast. Common to those incidents were very deep water near an underwater shelf and the shore, and significant surface ducting of sound. Because beaked whale habitat is pretty much everywhere, we had to assume they would be around the Hawaiian Islands. The bathymetry and underwater topography matches that of some of the areas where the previous incidents had happened. Therefore in the three choke point exercises involved in RIMPAC, we took extra measures, like the increased monitoring I mentioned, to ensure we'd be less likely to affect beaked whales particularly, and other species generally.



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power of the sonar) you'll find in the Protective Measures Assessment Protocol from 450 yards out to 1,000 meters. It's also why we had some third-party observers in the air, at sea and on the shore. It was all meant to decrease to a very low level the likelihood that a whale that was somehow disoriented by, or swimming away from, sonar might end up on a beach.

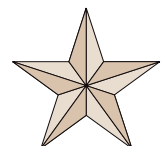
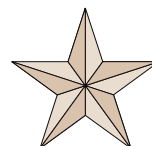
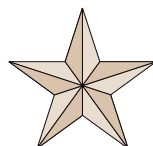
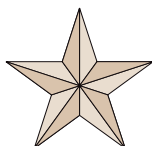
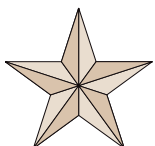
Choke Point Exercises

There have been a few instances over the past ten years in which we discovered that active sonar use was a contributing factor in some number (typically less than 20 per incident) of beaked whales beaching themselves alive. Some number of those (about half across all the incidents) then died from the effects of beaching. In each of those cases, several ships employed active sonar for a number of

Litigation

The day after NMFS granted the authorization for the exercise, and the same day the "in port" phase of the exercise began, the Navy and NMFS were named in a lawsuit saying the authorization and documentation for the exercise were not robust enough under the statutes. The Plaintiffs sought from the court a TRO to keep the Navy from emitting sonar during the exercise. Although the DEPSECDEF issued a NDE under MMPA on Friday, 30 June 2006, the judge in the case granted the Plaintiffs' request for the TRO because she felt there was a chance the Plaintiffs might be able to win their case should it go to trial.

As part of the TRO, the judge ordered the Plaintiffs and Defendants to "meet and confer" to attempt to work out differences to settle the suit. The outcome of the settlement



talks was that the Navy agreed to one additional mitigation measure (an additional marine mammal lookout on each sonar emitting ship), and confirmed several things we were already doing in the exercise. We confirmed that RIMPAC planning already included no operations within 25 nautical miles (nm) of the newly designated Northwest Hawaiian Islands Marine National Monument. (We did NOT say we'd be restricted from operating there and we did NOT agree to a 25 nm "buffer zone.") We confirmed that sonar technicians listening passively would alert the Combat Information

the challenge. Therefore, we envisioned use of the NDE as a bridge to ultimate compliance through long term planning documents covering all our operating areas, within which we could then run any number of exercises. The timing of the NDE initiative was such that it was ripe for signing at about the time RIMPAC began and the lawsuit was filed. Therefore, the NDE was signed to attempt to protect RIMPAC against the lawsuit, and for six months thereafter to provide a time within which to work the process issues going forward.

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Center (CIC) and lookouts if they heard marine mammals nearby. We confirmed that aircrews also had the responsibility to monitor for marine mammals and would also report back to the CIC of any nearby ship.

When the Navy and the Plaintiffs agreed to this settlement, the lawsuit was dropped and the TRO lifted. That was on 7 July 2006, and the exercise proceeded forward with active sonar included.

The National Defense Exemption under MMPA

The National Defense Authorization Amendment language from Fiscal Year 2004 included a provision for the Secretary of Defense to invoke an exemption under MMPA for military readiness activities when he saw the requirement to allow those activities to proceed unencumbered by the requirements of the MMPA. As the planning for RIMPAC proceeded, we determined that the resources (people, time and money) available to complete the required environmental planning for the number of exercises we run in a typical year (about 30 to 35) were not going to be sufficient to get that planning done. The same could be said about the resources the regulator, NMFS, could bring to bear on

The Way Ahead

Having successfully carried out RIMPAC (and at this point having seen no evidence of ill effects of sonar in the exercise), we need now to analyze everything we learned from the process, the litigation, the mitigation measures, and the results of our observations at sea to determine how best to proceed on future exercise planning, including our environmental planning. We are working now with the Fleet staffs and with the Secretary of the Navy's staff to determine the strength of our current strategy and what RIMPAC means in context.

The last chapter has not been written by any means. The effects of sonar on the environment will continue to be a very important issue for the foreseeable future. You can be sure that Navy leadership—the Chief of Naval Operations and the Fleet Commanders—are fully engaged and committed to doing the right thing within the environmental statutes while continuing to carry out our responsibility to defend the nation against all threats. ⚓

Rear Admiral James A. Symonds
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